



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

JUN 18 2019

Regulatory Division

Mr. Tom McGill
U.S. Environmental Protection Agency
Wetlands Regulatory Section
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Dear Mr. McGill:

This letter is in reference to an ongoing investigation by the U.S. Army Corps of Engineers, Charleston District (Corps) regarding land clearing activities and potential unauthorized work in waters of the United States on Berkeley County TMS parcel #1640002044, also known as Pine Hope Plantation, and located adjacent to, or near, 200 Pine Hope Lane, Cordesville, Berkeley County, South Carolina (the Pine Hope site). The Corps pre-coordinated the general issues present below with Mr. Mike Wylie (EPA Region 4, Wetlands Enforcement Section) in early April 2019 to bring initial awareness to this matter.

The Pine Hope site is owned by a former Congressman, the Honorable Henry E. Brown Jr. A review of aerial imagery dating back to 1989 revealed continuous activity in waters of the U.S. on the Pine Hope site from 1989 to 2014. Although Mr. Brown performed the above referenced work without a Department of the Army (DA) permit, a search of Corps records further revealed that the Corps previously issued a jurisdictional determination (JD) to Mr. Brown for the Pine Hope site on July 14, 1989. With regard to Section 404(f) of the Clean Water Act, 33 U.S.C. 1344(f), the Corps' 1989 JD letter states as follows:

After reviewing the information you submitted, it appears that your silviculture operation may be exempt from the permitting requirements of Section 404(f) of the Clean Water Act; however, the final authority for reaching such a determination rests with the Environmental Protection Agency (see enclosed Section 323.4). By copy of this letter, I have forwarded all relevant information to that agency for their review. (enclosed)

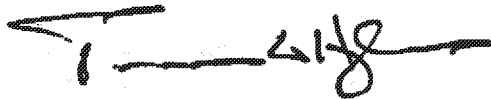
Unfortunately, the above referenced "information" that Mr. Brown "submitted" in support of his 1989 JD request, as well as any response by EPA, is absent from the Corps' project file. Even so, by letter dated February 20, 2018, the South Carolina Forestry Commission (SCFC) notified Mr. Brown that his activities at the Pine Hope site were inconsistent with normal silviculture practices and were not compliant with S.C. Forestry Best Management Practices (BMPs). To date, Mr. Brown has provided no evidence that would refute or overcome the above referenced SCFC determination, and therefore, the Corps believes it is unlikely that Mr. Brown could meet his burden to prove that his activities meet the requirements of the Section 404(f) exemption.

In light of the above, and in accordance with the "Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency Concerning the Determination of the Section 404 Program and the Application of the Exemptions under Section 404 (f) of the Clean Water" (MOA on Geographical Jurisdiction and Section 404(f) of the Section 404 Program), the Corps is requesting for the EPA to provide a project-specific determination for the activities at the Pine Hope site as a "special 404(f) matter." In recognition that this special 404(f) matter is associated with an ongoing investigation and possible enforcement action, the Corps acknowledges that the EPA's determination will be "binding regardless of which agency is subsequently designated lead enforcement agency pursuant to the 1989 Enforcement MOA" (see Section V.A. of the MOA on Geographical Jurisdiction and Section 404(f) of the Section 404 Program).

Furthermore, to the extent the EPA desires to take this case as a referral in accordance with the "Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act" (the 1989 Enforcement MOA), please advise the Corps of that determination as well.

Enclosed please find relevant correspondence concerning this matter, as well as a copy of the complete copy of the Corps' Regulatory file for your review and consideration. If additional information is needed regarding this matter, please do not hesitate to contact me at 843-329-8044.

Sincerely,



Travis G. Hughes
Chief, Regulatory Division

Enclosures:

Compact Disc titled "SAC-2014-00937 Henry Brown Site" with the following:

1. Corps JD Letter for the Pine Hope Site dated July 14, 1989
2. Corps Warning Letter dated September 9, 2014
3. Email correspondence dated March 28, 2017
4. Email correspondence dated March 27, 2017
5. Email correspondence dated April 21, 2017
6. Henry Brown Counsel letter dated October 13, 2017
7. Henry Brown Counsel letter dated January 25, 2018
8. SC Forestry Commission letter dated February 20, 2018
9. DOJ letter dated April 6, 2018
10. Henry Brown Counsel letter dated May 21, 2018
11. Corps Regulatory file for the Pine Hope Site